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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	

REPLY COMMENTS OF SPRINT CORPORATION

In its initial comments, Sprint urged the Commission to treat ISP-bound traffic as if it were local for purposes of intercarrier compensation. Sprint argued that this approach is the only one that is consistent with the Commission's access charge exemption for ESPs and the Commission's stated intent to continue to treat revenues and expenses relating to ISP-bound traffic as intrastate for purposes of jurisdictional separations. Because of the imbalance of bargaining power as between ILECs and CLECs, Sprint objected to the notion that compensation for this traffic is best left to negotiations (separate from those involved in determining reciprocal compensation for purely local traffic). Sprint also argued that the Commission's tentative solution to treat this traffic separately from local traffic, but in conjunction with negotiations for other aspects of local interconnection, and to create a Section 251/252-like mechanism for states and federal district courts to resolve negotiation impasses regarding ISP-bound traffic was beyond the Commission's jurisdiction.

Sprint's bottom line position – that the Commission should adopt a rule applying local reciprocal compensation rates to ISP-bound traffic, thereby treating this traffic as if

it were local – is shared by a large number of competitive carriers.[1] Many of these carriers join in Sprint's concerns about the imbalance in bargaining power that exists between ILECs and CLECs, and about the opportunity for delay that would ensue if intercarrier compensation for ISP-bound traffic were treated separately from purely local traffic.[2] The RBOCs share Sprint's view that the Commission cannot create Section 251/252-like jurisdiction in the state commissions and federal district courts. However, their proposals for intercarrier compensation are so extreme that they demonstrate the infirmity of treating ISP-bound traffic separately from purely local traffic and relying, in the first instance, on negotiations between ILECs and CLECs to determine such compensation. These reply comments will respond to the RBOCs' arguments and will discuss briefly separations issues and whether Section 252(i) applies to reciprocal compensation.

I. INTERCARRIER COMPENSATION

In general, the RBOCs argue either that there should be no intercarrier compensation for ISP-bound traffic, or that such compensation should flow to the originating carrier instead of the terminating carrier. More specifically, Ameritech argues (at 8) that no intercarrier compensation is appropriate. Bell Atlantic (at 1-2) similarly argues that the Commission should rely on negotiations to determine "whether, and if so, what form or amount of intercarrier compensation should apply" and urges (at 6), as a default position if no voluntary agreement is reached, that there should be no intercarrier compensation. BellSouth (at 9) would obligate the LEC serving the ISP to compensate

[1] See e.g., AT&T at 3, MCI/WorldCom at 19, Time Warner at 1, ALTS at 12, Focal Communications at 14-15, CompTel at 3-5.

[2] See e.g., AT&T at 4-5, TRA at 2-3, Time Warner at 14.

the originating LEC, rather than vice-versa. SBC (at 22) would allow the originating LEC to be compensated through a meet-point billing arrangement in which that LEC could either bill the ISP a surcharge, bill the terminating LEC for access compensation or bill the ISP subscriber for access compensation. U S West (at 7) similarly draws on the meet-point billing/revenue-sharing mechanisms used for access and argues that the local business line revenues that the terminating LEC receives from the ISP should be shared with the originating LEC.

Despite the undeniable fact that a LEC performs the same functions in originating and terminating an ISP-bound call as it does in handling an ordinary voice local call, the RBOCs seize on the happenstance that the Commission has deemed ISP-bound calls to be "interstate" for jurisdictional purposes and proceed to advocate a "heads we win, tails you lose" approach to ILEC/CLEC interconnection. When (based again on the happenstance that some CLECs have focused their efforts on gaining ISPs as customers) traffic tends to flow from the ILEC to the CLEC, it is the ILEC, not the CLEC, that should receive compensation. Yet when traffic tends to flow to the ILEC from the CLEC, the terminating carrier is the one deserving of compensation.

The RBOCs' attempts to employ access-type meet point billing or revenue sharing arrangements to ISP-bound traffic cannot be reconciled with the Commission's ESP access charge exemption. It makes no sense to allow, as the Commission does, ESPs to order access facilities from the local business tariffs and, at the same time, require LECs serving ISPs to engage in access-like revenue sharing of local business revenues with other LECs. Applying the access revenue sharing mechanisms, which were designed to work in conjunction with the quite different scheme of interstate access

charges, to the use of local business line rates for ESP traffic would be like trying to fit a square peg in a round hole.

The RBOCs' arguments as to why local reciprocal compensation arrangements should not apply to this traffic do not withstand scrutiny. Ameritech argues (at 6-10) that the revenues it receives from residential customers who are heavy users of the Internet do not even cover Ameritech's own costs before any payments to another LEC for terminating a call to the ISP, while GTE argues (at 7) that payouts related to the ISP calls from a particular end user customer can be more than double its average revenue from that end user. However, these concerns are in very large part issues of local service rate levels and structure that are within the purview of the state commissions. Sprint does not deny that the substantial recent growth in Internet traffic imposes cost burdens on local exchange carriers that may not be adequately covered by existing rates. However, these cost burdens result from the nature of the traffic itself, rather than from the fact that some ISP-bound calls involve connections between two LECs. If a LEC serves both the end user and the ISP, it will incur the very same costs – and potential revenue shortfalls – that it incurs if the call only originates on its network and it must pay another local carrier to terminate the call to the ISP (assuming that the intercarrier compensation is set at cost-based levels). In other words, the sum of a LEC's local charges to a residential customer that makes heavy use of the Internet and the business line charges to the ISP may well be insufficient to cover the LEC's total cost of serving these two customers. But so long as the local rates govern end users, it makes no sense to apply non-local intercarrier compensation schemes to this traffic when more than one LEC is involved. Rather, the underlying problem is with the level and structure of the local rates, and can be addressed

by rationalizing rate levels (e.g., eliminating implicit cross-subsidy of residential service by business service) and employing rate structures, such as measured local service, that better account for differences in usage patterns. This problem also may be ameliorated as xDSL services are deployed to remove data traffic from the circuit-switched network. Such services would be most appealing to the heaviest users of the Internet.

Moreover, although ISP-bound traffic may be atypical both in holding times and directionality, it is not unique. As other commentors have pointed out, there are several types of local businesses that have one-way patterns and typically long holding times, such as customer service centers, ticket agencies and box offices, and the like.[3] It makes no sense to treat ISP-bound calls any differently than calls to these similar businesses. The RBOCs also fail to address the practical difficulties involved in determining which traffic is ISP-bound and which is not. Obviously, the larger ISPs and their local access numbers may be well publicized, but there are also many small, less visible ISPs, and a LEC may have no way of knowing whether a particular business customer is an ISP. Unless the Commission were to impose registration requirements on ISPs and also to take enforcement action to shut down the operations of unregistered ISPs, there would be no effective way to enforce distinctions in intercarrier compensation arrangements as between calls to ISPs and calls to other local business customers.

Another common complaint of the RBOCs and GTE is that reciprocal compensation results in windfalls to CLECs, especially those who serve only ISPs.[4] They claim that there are instances where CLECs offer free service to ISPs or even give

[3] See e.g., KMC Telecom at 4.

[4] See e.g., Bell Atlantic at 3, GTE at 8-9, and SBC at 21.

the ISPs "kickbacks" of a portion of the CLEC-reciprocal compensation revenues. In Sprint's view, this is more a fault of the level of reciprocal compensation than of applying the concept, as such, to ISP-bound traffic. It may well be that any windfalls that are accruing to CLECs serving ISPs today may in part be due to the RBOCs' greed. For example, Intermedia asserts (at 2-3) that before ISP traffic became a hot-button issue, ILECs often sought reciprocal compensation rates in excess of one cent per minute, but that after the ISP traffic issue gained more visibility, in 1998 several ILECs championed reciprocal compensation rates closer to 0.3 cents per minute.

Sprint believes that the Commission's rules governing reciprocal compensation should yield sound economic results when applied to ISP-bound traffic: Carriers can agree on bill and keep, and where traffic is reasonably balanced, state commissions can impose bill and keep (Section 51.713). Where reciprocal compensation is necessary, the rates should be based on efficient forward-looking costs of the ILEC (Section 51.705). In general, the rates should be applied symmetrically, except where the CLEC can show that its TELRIC costs for an efficiently configured network are higher than those of the ILEC (Section 51.711).[5] If reciprocal compensation rates are in fact based on efficient TELRIC costs, there is no reason to believe that windfalls will accrue even to CLECs who concentrate their efforts on the ISP market. Indeed, as Sprint pointed out in its initial

[5] In the latter regard, Sprint disagrees with the assertion of GST Telecom (at 16-17) that if such studies of CLEC costs were conducted, the resulting costs would likely be higher than the costs of the ILEC because of "amortization, the CLEC's start-up costs and the risks inherent with entry in a capital intensive market." Start-up costs, by their nature, are not reflective of efficient long run incremental costs, and inasmuch as the Commission's TELRIC methodology allows for risk-adjusted costs of capital for ILECs, there is no reason to believe that the CLECs' capital costs should be greater than those of the ILEC. If a CLEC does not expect its long run incremental costs to be equal to or less than those of the ILEC, it makes no business sense for the CLEC to enter the market to begin with.

comments, a major policy reason for treating ISP-bound traffic as if it were local is that it tends to moderate the negotiating positions of ILECs and CLECs alike. By contrast, the RBOC position that they should receive reciprocal compensation for ordinary voice traffic and not be forced to pay any monies to CLECs who terminate ISP traffic would simply resurrect their incentive to seek unreasonably high reciprocal compensation rates.

GTE (at 7) claims that CLECs serving ISPs may be able to avoid circuit switching altogether, using "SS7 bypass devices" instead, and that reciprocal compensation would over-compensate such CLECs. However, one of the benefits of competition is that new entrants induce incumbents to become more efficient and to employ new technologies more rapidly. Nonetheless, GTE does not claim that any CLEC in fact is using such equipment and only cites "media descriptions" for its assertion that such equipment could reduce a carrier's cost by a factor of ten. Thus, GTE has not proven that the use of such equipment warrants a different approach to intercarrier compensation.

SBC, on the other hand, argues (at 21-22) that the possibility that CLECs would share their windfall reciprocal compensation payments with ISPs would make the ISPs reluctant to move away from voice-grade circuit-switched technologies and to employ more efficient access arrangements. But, the clamor of the ISP industry for access to xDSL services of ILECs and to broadband cable services belies the contention that ISPs are technology-averse and content to use analog voice access in perpetuity. In any event, as discussed above, setting reciprocal compensation rates at proper forward-looking cost levels should eliminate any realistic possibility of LEC kickbacks to ISPs and thus eliminate any such economic incentives that may exist.

II. SEPARATIONS ISSUES

Ameritech (at 28) argues that intercarrier payments for ISP-bound traffic should be booked to the interstate jurisdiction, even though it supports treating other ISP costs and revenues as intrastate. SBC argues (at 29-31) that traffic-sensitive costs of originating ISP traffic should be allocated to the interstate jurisdiction. Both of these carriers take a one-sided approach to the issue. It makes no sense to treat one aspect of ISP-bound traffic as interstate while treating other aspects – including revenues from business lines sold to ESPs and revenues from end users who call ESPs – as intrastate. Given the Commission's determination (in ¶36) that "both the costs and revenues associated with [ESP] connections will continue to be accounted for as intrastate," the only logical course of action is to treat all costs and revenue streams related to ESP traffic as intrastate.

III. APPLICATION OF §252(i)

Ameritech (at 21-27) and Bell Atlantic (at 8) claim that most favored nation rights under Section 252(i) do not apply to intercarrier compensation for ISP-bound traffic. Ameritech, noting that Section 252(i) limits the MFN requirement to "any interconnection, service, or network element... ," argues that reciprocal compensation is neither interconnection, a service provided by a LEC nor a network element. Although "reciprocal compensation" may not be a "service," the transport and termination of interconnected traffic is quite clearly a service that one LEC performs for another, and §252(i) requires such service to be made available to others "on the same terms and conditions." The reciprocal compensation rates that an ILEC charges to a CLEC are the terms and conditions for the service of transporting and terminating interconnected

traffic. Thus, reciprocal compensation falls squarely within the provisions of Section 252(i).

Ameritech's attempt to buttress its weak statutory argument with a policy argument is equally unavailing. Ameritech argues (at 24-25) that if a particular requesting carrier has higher costs than the rest of the industry, and thus is entitled to higher reciprocal compensation payments, then allowing other, more efficient CLECs to opt into that agreement through Section 252(i) would allow all LECs to enjoy the benefits of the cost structure of the least efficient competitor. However, nothing in the Commission's MFN rules (Section 51.809) contemplates that that would be the case. The case where a CLEC can show that it is entitled to a higher reciprocal compensation rate would be an instance where asymmetric interconnection rates apply – a lower rate, based on the ILEC's costs, to be received by the ILEC, with the higher rate to be received only by the CLEC. In this instance, other CLECs seeking to interconnect with the ILEC would be entitled only to the ILEC's transport and termination rate. Indeed, the policy implications of Ameritech's position are quite anticompetitive: if Section 251(i) did not apply, an ILEC would be free to discriminate at will among CLECs by charging different transport and termination rates, when in fact the ILEC is performing the identical service for all CLECs.

Ameritech (at 25) and Bell Atlantic (at 8) further argue that since ISP-bound calls are not "local," intercarrier compensation for such calls is not within the ambit of reciprocal compensation, and thus the MFN provisions would not extend to such traffic. If, however, the Commission simply adopts a rule treating ISP-bound traffic as if it were

local for purposes of intercarrier compensation, then any MFN elections of reciprocal compensation terms would automatically extend to ISP-bound traffic as well.

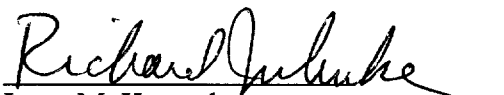
The other MFN issue on which other parties commented was whether the MFN election of an agreement can extend the term beyond the expiration date of the initial agreement. The overwhelming consensus in the record is that such election cannot serve to extend the terms of the agreement beyond its initial term, and Sprint shares that view.

IV. CONCLUSION

The Commission should promptly end the uncertainty that now surrounds intercarrier compensation for ISP traffic by adopting a rule that such traffic is to be treated as if it were purely local traffic.

Respectfully submitted,

SPRINT CORPORATION



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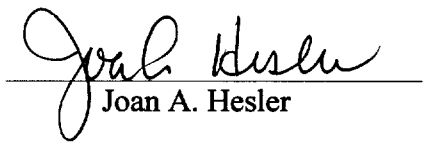

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